

Markley Cove Resort

**United States Department of the Interior
BUREAU OF RECLAMATION
MID-PACIFIC REGIONAL OFFICE
2800 COTTAGE WAY
SACRAMENTO CALIFORNIA 95825-1898**

**IN REPLY
REFER TO:
MP-401 715**

Memorandum

To: Recreation Manager, Lake Berryessa
From: Assistant Regional Director
Subject: Assignment Document - Markley Cove Resort--Lake Berryessa--Solano Project (Your Letters Dated July 26, 1988 and October 18, 1988)(Recreational Facility)

Per our letter dated June 13, 1988 (copy enclosed), we have previously approved those items contained in the Markley Cove Assignment packet. In addition, the signed assignment document you have provided for our execution has been revised per our recommendations and now satisfactorily fulfills the requirements for assignment of the resort. Accordingly, we approve the assignment of the resort to the assignee, John C. Frazier, LII and have signed the assignment document. We are returning three copies; one for your files, and one each for the assignee and assignor.

We have reviewed your draft letter to the assignee which highlights some of the items discussed at the meeting on August 19, 1988. The letter accurately reflects those items discussed with the assignee and clarifies important points with respect to resort reorganization, abandonment of long-term use sites in 1991, and private houseboats. Some recommended changes have already been discussed with Bob Semmens of your staff.

We appreciate the assistance of your office with this assignment and look forward to working with the new assignee.

Enclosures 2

Copy of Letter dated June 13, 1988
3 Copies of Assignment Document

JUN 13 1988
MP-401
715.

To: Recreation Manager, Lake Berryessa
From: Regional Director
Subject: Assignment Document - Markley Cove Resort - Lake Berryessa - Solano Project (Your Letter Dated May 10, 1988)

We have reviewed the items contained in the Markley Cove assignment packet, including the revised assignment document. We find the information provided by the proposed assignee, John Frazier and Associates, to be adequate and it fulfills the requirements for assignment of the Resort.

Your revision of the assignment document reflects the recent improvements to the Resort's water and sewage systems to correct the deficiencies noted by the California Regional Water Quality Control Board in their letter of October 29, 1986, and the Napa County Division of Environmental Health in their letters of July 17, 1986 and March 11, 1987. We further understand that both the State and County have approved the improvements made to the sewer system and have found the system to be in substantial compliance with all applicable requirements. With regard to the deficient water system, we understand that a number of improvements have been made and that within 15 days of the execution of the assignment the assignee will submit a schedule for implementing additional improvements which have been approved by both the State and County.

In addition to the above improvements to the water and sewer systems, we understand that most of the "items of default" listed in your March 23, 1987 letter have been satisfactorily resolved.

In view of the above, we will approve an assignment of the Markley Cove Resort to the proposed assignee and request you to finalize the revised assignment -document including the addition to Condition A (see attached), as discussed with Ron Brockman. Please return five signed original copies to this office for execution. We will return three copies; one for your files and one each for the assignee and assignor. We appreciate your efforts in securing the assignment and look forward to working with the assignee who has shown excellent cooperation in resolving the Resorts recent problems.

(sgd) NEIL W. SCHILD

Attachment

Public Law 96-375
96th Congress

Water
develop
feasibili
investig

An Act

To authorize the
Secretary of the interior
to engage in feasibility
investigations of certain
water resource
developments, and for
other purposes.

*Be it enacted by the
Senate and House of
Representatives of the
United States of America
in Congress assembled,
That the Secretary of the
Interior is hereby
authorized to engage in
feasibility studies of the
following proposals:*

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(1) Hungry Horse Project, Hungry Horse Powerplant Enlargement and Reregulating Reservoir, located on the South Fork of the Flathead River in Flathead County, Montana.

(2) Boise Project, Power and Modification Study, located in southwestern Idaho (Ada, Boise, Canyon, Elmore, Gem, Payette, and Valley Counties) and in eastern Oregon (Malheur County).

(3) San Francisco Bay Area Waste Water Reclamation Project, located in the San Francisco Bay area and western San Joaquin Valley of California

(4) San Joaquin Valley Drainage Investigation with a study area in the San Joaquin River basin, Tulare basin, and the Sacramento-San Joaquin Delta-Suisun Bay area of California.

(5) Delta Overland Water Service Facilities, located in the Sacramento, San Joaquin, Solano, and Contra Costa Counties of California.

(6) Chino Valley Project, located in north central Yavapai County and south central Coconino County in Arizona.

(7) North Platte River Hydroelectric Power Study, Pick-Sloan Missouri Basin Program, Western Division, located in Natrona and Carbon Counties, Wyoming.

(8) Wind-Hydroelectric Energy Project in Carbon and Albany Counties, Wyoming

(9) Lake Meredith Salinity Project, in Quay County, New Mexico, and Oldham, Potter, Moore, Carson, and Hutchinson Counties in Texas.

(10) Colorado-Big Thompson Powerplant of the Pick-Sloan Missouri Basin Program in Colorado.

(11) The relocation of the intake of the Contra Costa County Water District Canal from Rock Slough to the vicinity of the Clifton Court Forebay in Contra Costa County, California.

(12) The Los Vaqueros Dam, pump-generating plant, and related features at a site approximately eight miles west of the Clifton Court Forebay in Contra Costa County, California.

(13) The obtaining of a water supply of up to ten thousand acre-feet per year for existing and potential domestic, recreational, and municipal water users along the Colorado River in California who do not hold water rights or whose rights are insufficient to meet their requirements.

(14) To determine the cause and extent of the high groundwater levels which developed in and adjacent to the town of Moses Lake Washington, following the initiation of irrigation of the lands in and adjacent to the town and

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determine by the studies authorized herein measures to resolve the problems caused by the high water levels in the area

(15) The Cle Elum Dam and Tiron Dam powerplants Yakima Project, Washington.

(16) The Washington Dam powerplant, Owyhee Project, Oregon.

(17) The Wickiup Dam powerplant, Deschutes Project, Oregon

(18) The Tiber Dam powerplant, Lower Marias Unit, Marias Division, Pick-Sloan Missouri Basin Program, Montana.

(19) The New Siphon Drop powerplant, Yuma Project, Arizona, California.

(20) The Guernsey Dam powerplant enlargement, North Platte Project, Wyoming.

(21) Increasing the height

_____ Theodore Roosevelt Dam _____

(22) The Sly Park Extension Unit, American River Division, Central Valley Project, California.

(23) The Prineville Dam powerplant, Crooked River Project Oregon.

Shasta Dam And Reservoir, Central Valley Project, Calif

SEC. 2 (a) The Secretary of the interior is hereby authorized to engage in feasibility

studies relating to enlarging Shasta Dam and Reservoir, Central Valley Project, California, or to the construction of a larger dam on the Sacramento River, California, to replace the present structure.

(b) The Secretary of the interior is further authorized to engage in feasibility studies for the purpose of determining the potential costs, benefits, environmental impacts, and feasibility of using the Sacramento River for conveying water from the enlarged Shasta Dam and Reservoir or the larger dam to points of use downstream from the dam.

(c) Before funds are expended for the feasibility studies authorized by this section, the State of California shall agree to participate in the studies and to participate in the costs of the studies. The State's share of the costs may be partly or wholly in the form of services directly related

Lake Berryessa, Calif.; Conc. Agreements. Term, renewal	<p>to the conduct of the studies.</p> <p>SEC 3. The Secretary of the interior is authorized to review and revise, as may be necessary, the feasibility study of the Kellogg Unit, Central Valley Project, Contra Costa County, California.</p>	
Recommendation s to Congress	<p>SEC. 4. In preparing the studies and review authorized by subsections (11) and (12) of section 1 and section 3, the Secretary of the Interior shall fully describe all potential beneficial or detrimental impacts resulting from the construction or operation of the projects under study. The Secretary shall further make recommendations to the Congress for assuring that neither the construction nor the operation of any such project results in the deterioration of the water quality and ecology of the Sacramento-San Joaquin Delta or the San Francisco Bay estuarine.</p>	<p>SEC 5 (a)</p> <p>Notwithstanding any other provision of law, the Secretary of the Interior is authorized to enter into new negotiated concession agreements with the present concessionaires at Lake Berryessa, California. Such agreements shall be for a term ending not later than May 26, 1989, and may be renewed at the request of the concessionaire with the consent of the Secretary of the Interior for no more than two consecutive terms of 10 years each. Concession agreements may be renegotiated preceding renewal. Such agreements must comply with the 1959 National Park Service Public Use Plan for Lake Berryessa, as amended, and with the Water and Power Resources Service Reservoir Area Management Plan: <i>Provided</i>, That the authority to enter into contracts or agreements to incur obligations or to make payments under</p>

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43 USC
Storage
designa
43 USC 620k
no

this section shall be
effective only to the
extent and in such
amounts as are provided
in advance in appropriate
Acts.

Certain
facilities,
owners

(b)

Notwithstanding any
other laws to the
contrary, all permanent
facilities placed by the
cessionaires in the
seven resorts at Lake
Berryessa shall be
considered the property
of the respective current
cessionaires. Further,
any permanent additions
or modifications to these
facilities shall remain the
property of said
cessionaires:

86 Stat.

86 Stat.

Provided, That at the
option of the Secretary of
the Interior, the United
States may require that
the permanent facilities
mentioned herein not be
removed from the
cession areas, and
instead, pay fair value for
the permanent facilities
or, if a new
cessionaire assumes
operation of the
cession, require that
new concessionaire to
pay fair value for the

permanent facilities to
the existing
cessionaire.

SEC. 6. The
Reclamation Project
Authorization Act of 1972
(Public Law 92-514, 86

Stat. 964) is amended -
(a) by inserting
in section 101 of
such Act, following
“on this project”, as
modified by the
plans shown in the
Definite Plan Report
of the Water and
Power Resources
Service, dated
November 1979”;
(b) by inserting
in section 102(b) of
such Act, following
“domestic wells in
existence”, “outside
the project
boundary”; and
(c) by striking in
section 109 of such
Act “\$18,246,000
(April 1972 prices)”
and inserting in lieu
thereof
“\$57,139,000 Oct
1979 prices”).

SEC. 7. The Curecanti
Storage Unit of the
Colorado River Storage
Project constructed
under the authority of the
Act of April 11, 1956 (70
Stat. 106) is hereby
designated and hereafter
shall be known as the
Wayne N. Aspinall
Storage Unit of the
Colorado River Storage
Project. Any law,
regulation, record, map,
or other document of the
United States referring to
the Curecanti storage
Unit shall be held to refer
to the Wayne N. Aspinall
Storage Unit.

SEC. 8 Section 1(5) of
the Act of July 2, 1956 (70
Stat. 483), is hereby
amended to read as

follows: “(5) Provide for payment of rates under any contract entered into pursuant to said subsection (e) in advance of delivery of water on an annual, semiannual, bimonthly, or monthly basis as specified in the contract.”.

Solar

Salinity
control
proposals,
study

SEC. 9. The Secretary of the interior in coordination with the Secretary of Energy shall conduct a three-year study of the feasibility of integrating a solar powerplant in Arizona, Nevada, and California into the Federal hydroelectric system, including but not limited to consideration of the applicable solar technology, the operation of the Federal hydroelectric system and the integration of electric power generated by such a powerplant in the Federal system. The study shall specifically consider operations of Department of Energy Project 76-2-b, 10 MW Solar Thermal Power and related technology development. The Secretary shall complete the study by January 1, 1984 and submit a report to the President and the Congress.

SEC 10. That the proviso contained in section 201 of the Colorado River Basin Project Act (43 U.S.C. 1511) is amended by striking out “the Secretary” and inserting in lieu thereof “any Federal official”.

Approp
Author

SEC 11. Section 206 of Public Law 92-514 is amended to read as follows: “There is hereby authorized to be appropriated for construction of the Brantly project the sum of \$172,728,000 (based

on April 1979 prices), plus or minus such amounts, if any, as may be justified by reason of changes in the construction costs as indicated by engineering cost indexes applicable to the types of construction involved and, in addition thereto, sums as may be required for operation and maintenance of the project.”.

SEC 12. The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following salinity control proposals:

- (1) Lower Gunnison Basin unit, located in Delta, Montrose, and Ouray Counties, Colorado.
- (2) Glenwood-Dotsero Springs unit, located in Garfield and Eagle Counties, Colorado.
- (3) Meeker Dome unit., located in Rio Blanco County, Colorado.
- (4) McElmo Creek unit, located in Montezuma County, Colorado.
- (5) Uinta Basin unit, located in Duchesne and

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Uintab	ng.
Counties, Utah.	
(6) Dirty Devil River	SEC. 13.
unit, located in	
Sanpete,	Approved
Sevier, Emery,	October 3,)1980.
and Wayne	
Counties, Utah	
(7) Price-San	
Rafael Rivers	
unit, located in	
Carbon, Emery,	
and Sanpete	
Counties, Utah.	
(8) La Verkin	
Springs unit,	
located in	
Washington	
County, Utah.	
(9) Lower Virgin	
River unit,	
located in Clark	
County,	
Nevada, and	
Mohave County,	
Arizona.	
(10) Big	
Sandy	
River	
unit,	
located	
in	
Sweet	
water	
County	
,	
Wyomi	

LEGISLATIVE HISTORY:
HOUSE REPORT No. 96-710 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 96-890 accompanying H.R. 5278, and No. 96-938 accompanying S. 3017 (Comm on Energy and Natural Resources).
CONGRFSSIOAL RECORD, Vol. 126 (1980):
Feb 5, considered and passed House.
Sept. 17, considere d and passed Senate amended, in lieu of S. 3017.
Sept 24,

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House
concurred
in Senate
amendme
nt

PUBLIC LAW 96-375 – OCT. 3, 1980

ASSIGNMENT AND CONSENT TO ASSIGNMENT
OF CONCESSIONAIRE'S AGREEMENT

This assignment entered into on this 4th day of November 1988, by and between the Assignor, Carl Frazier, the Assignee, John C. Frazier, III and the Government, United States of America.

WHEREAS, The Assignor on May 15, 1981, entered into the Markley Cove Resort Concession Agreement with the Government, a copy of which is attached hereto and marked Exhibit 1; and

WHEREAS, Assignor has in effect turned over the management of Markley Cove Resort to the Assignee; and

WHEREAS, Assignee is desirous of continuing to operate and maintain the Markley Cove Resort in accordance with the concession agreement, including State and local laws; and

WHEREAS, Assignor is desirous of assigning his interest in the concession agreement to Assignee; and

WHEREAS, subject to the terms of this assignment, the Government finds Assignee to be acceptable.

NOW THEREFORE, In consideration of the foregoing recitals, the parties agree as follows:

1. Assignor hereby assigns, conveys, and transfers to Assignee all his right, title, and interest in the concession agreement for Markley Cove Resort (Exhibit 1), including any and all structures, improvements, and equipment located and utilized on the premises which Assignor has any claim of interest.

2. Assignee hereby assumes and agrees to be

bound by and undertake each and every one of the terms, covenants, and conditions contained in the concession agreement.

3. Assignor hereby waives any and all claims, demands, and rights against the Government which it now has or may hereafter have in connection with the concession agreement.

4. Subject to the condition set forth below, the Government hereby recognizes, approves, and consents to the Assignee as the Assignor's successor in interest to the concession agreement.

Condition A: Assignee has submitted plans to the County of Napa and the State Department of Public Health Service, and has obtained their approval of such plans for the installation of a public water system. Assignee agrees to submit a schedule which will provide the time frame for implementing the approved plan within 15 days after the execution of this Assignment Document. Assignee agrees to complete the installation within the time frame provided in the schedule. Failure to complete the installation shall be deemed a material breach of the Concession Agreement.

5. Notices: It is hereby agreed that any notice required to be given to assignee pursuant to this assignment or the concession agreement shall be addressed to the assignee as follows:

John Frazier P.O. Box 987, Winters, CA
95694

Proof of delivery to the above address shall be deemed to be

acceptance of such notice by assignee for all legal purposes set forth in this assignment or concession agreement.

6. The Assignee is hereby entitled to all rights, title, and interest of the Assignor in and to the concession agreement in all respects as if the Assignee was the original party to the agreement. The term “concessionaire” as used in the concession agreement shall be deemed to refer to the Assignee rather than the Assignor.

7. The Assignor and the Assignee hereby agree that the Government should not be obligated to pay or reimburse either of them for, or otherwise give effect to any costs, taxes, or other expenses, or any increases therein, directly or indirectly arising out of or resulting from this assignment, conveyance, and transfer other than those which the Government, in the absence of this assignment, conveyance and transfer, would have been obligated to pay or reimburse under the terms of the concession agreement.

8. Except as herein modified, the concession agreement remains in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has executed this assignment as of the day and year first above written.

“Government”

UNITED STATES OF AMERICA Department of the Interior
Bureau of Reclamation

BY _____
Title Regional Director

ASSIGNOR:
_____ Carl Frazier

ASSIGNEE:
_____ John C.
Frazier, III

JUN 13 1988

MP-401
715.

To: Recreation Manager, Lake Berryessa

From: Regional Director

Subject: Assignment Document--Markley Cove Resort--Lake Berryessa--Solano Project (Your Letter Dated May 10, 1988)

We have reviewed the items contained in the Markley Cove assignment packet, including the revised assignment document. We find the information provided by the proposed assignee, John Frazier and Associates, to be adequate and it fulfills the requirements for assignment of the Resort.

Your revision of the assignment document reflects the recent improvements to the Resort's water and sewage systems to correct the deficiencies noted by the California Regional Water Quality Control Board in their letter of October 29, 1986, and the Napa County Division of Environmental Health in their letters of July 17, 1986 and March 11, 1987. We further understand that both the State and County have approved the improvements made to the sewer system and have found the system to be in substantial compliance with all applicable requirements. With regard to the deficient water system, we understand that a number of improvements have been made and that within 15 days of the execution of the assignment the assignee will submit a schedule for implementing additional improvements which have been approved by both the State and County.

In addition to the above improvements to the water and sewer systems, we understand that most of the "items of default" listed in your March 23, 1987 letter have been satisfactorily resolved.

In view of the above, we will approve an assignment of the Markley Cove Resort to the proposed assignee and request you to finalize the revised assignment document including the addition to Condition A (see attached), as discussed with Ron Brockman. Please return five signed original copies to this office for execution. We will return three copies; one for your files and one each for the assignee and assignor.

We appreciate your efforts in securing the assignment and look forward to working with the assignee who has shown excellent cooperation in resolving the Resort's recent problems.

Attachment

(sgd) NEIL
W.
SCHILD

DEPARTMENT OF THE INTERIOR
WATER AND POWER RESOURCES SERVICE
CONCESSION AGREEMENT

Markley Cove Resort
Lake Berryessa
Located in Napa County, California

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DEPARTMENT OF THE INTERIOR
WATER AND POWER RESOURCES SERVICE
CONCESSION AGREEMENT

Markley Cove Resort
Lake Berryessa
Located in Napa County, California

This Concession Agreement made and entered into this 15 day of 1981, by and between the Water and Power Resources Service, hereinafter referred to as the "Government" and Carl Frazier of Winters, California, hereinafter referred to as the "Concessionaire."

PART A. REQUIREMENTS

A.1. Grant and Description of Premises

The Government, in accordance with Public Law 96 - 375 for and in consideration of the agreements stated herein, grants to the Concessionaire for the purposes stated herein, the right, privilege, and duty to construct, equip, operate, and maintain a concession to provide accommodations, facilities, and services for the public at the resort identified as Markley Cove Resort and shown on Attachment 1, Plan of Markley Cove Resort, in accordance with Exhibit A, the Reorganization Plan and Exhibit B, the Reorganization Schedule, attached hereto and made a part hereof and the Public Use Plan of 1959 as amended.

A.2. Condition of Premises

The taking of possession of the subject premises by the Concessionaire shall, in itself, constitute acknowledgment that the premises are accepted "as is" and that the Government shall not be obligated to make any alterations, additions, or betterment's thereto. The Concessionaire, however, shall be responsible for altering, repairing, or adding to the premises to ensure they are in

good and tenantable condition and conform to the provisions of this agreement.

A.3. Term of Concession

This agreement is a new and renegotiated agreement which supersedes and cancels the agreement between the County of Napa and Markley Canyon Resort Company, Inc., dated May 12, 1959. This agreement shall be effective on date of execution by the parties and shall continue in force until May 26, 1989, unless sooner terminated in accordance with the provisions stated herein.

The agreement may be renewed, however, at the request of the Concessionaire with the consent of the Government for no more than two consecutive terms of 10 years each. The agreement may be renegotiated preceding renewal at the request of either party. It is the intent of the Government to renew this agreement for both of the 10 - year renewal periods, Provided, the Concessionaire is in compliance with the terms of this agreement.

A.4. Franchise Fee

a. In consideration for the privilege of operating the Markley Cove Resort at Lake Berryessa, the Concessionaire shall pay the Government, on a quarterly basis, a franchise fee expressed as- a percentage of gross receipts.

b. The Government will determine the franchise fee rate in accordance with the attached Rating Plan Exhibit-D. The purpose of the rating system is to reward the Concessionaire for maintaining a high quality service to the public. A rating of 90-100 percent of maximum rating will result in a franchise fee of 1 to 2 percent of gross receipts, a rating of 60 - 89 percent of maximum rating, 2 to 3 percent, and a rating of 0-59 percent of maximum rating, 3 percent. The franchise fee rate for each succeeding calendar year shall be determined annually by the Government. The franchise fee rate shall not exceed 3 percent. The decision of the Government as to the franchise fee rate shall be final and not

subject to appeal. The determination of the franchise fee rate shall be forwarded to the Concessionaire by October 15 of each year.

The Concessionaire's franchise fee payments shall be due and payable within 45 days after the end of each quarter. Quarters of the year end on March 31, June 30, September 30, and December

31. The franchise fee rate for calendar year 1981 shall be 3 percent.

A.5. Exclusive Use

The policy of public use on Water and Power Resources Service lands and water areas precludes the exclusive use of any recreation facilities for extended periods of time. No occupancy of any site or facility by any individual or a member of his or her immediate family may exceed fourteen (14) consecutive days, except as otherwise authorized by this agreement or as approved by the Government.

A.6. Maintenance

The Concessionaire will physically maintain and repair all facilities used in the operation, including grounds maintenance and all necessary housekeeping activities associated with the operation. In order that a high standard of physical appearance, operation, repair, and maintenance will be assured, appropriate annual inspections will be carried out jointly by the Government and the Concessionaire to determine such maintenance and repair needs. Maintenance standards will adhere to the following guidelines:

- a. All improvements, facilities, and equipment will be maintained to the standard to which it was approved with an allowance for normal wear and tear resulting from public use.
- b. Existing facilities, improvements, and structures as shown in Exhibit C, Existing Facilities, will not be considered to be in violation of existing codes or standards in this agreement except where the Government determines that deficiencies are a threat to

the health and safety of the public or could cause future resource damage.

c. Any rehabilitation or reconstruction must be as shown in the Reorganization Plan and Reorganization Schedule and will be developed in accordance with the standards contained or referenced in this agreement for new developments.

d. All new facilities and improvements (such as long-term mobile homes and travel trailers, restaurants, restroom and shower facilities, etc.) shall comply with the requirements of Paragraph A.6.e.

e. All existing facilities and improvements to remain during the term of this agreement (such as long-term mobile homes, travel trailers, restaurants, restroom and shower facilities, etc.) shall be brought into compliance with the following additional requirements by the dates specified in the Reorganization Schedule.

(1) Color

All colors must be approved in advance by then Government, and shall be those which are consistent with the local natural environment. Certain shades of the browns, greens, and grays are considered to be in this category. Minor amounts of brighter colors may be used for signs or special attention items.

(2) Texture

Roofs and building siding must be of a texture consonant with the local natural environment. Such materials as shiny metal surfaces are unacceptable and will not be permitted. All materials must be approved in advance by the Government.

(3) Landscaping

All unvegetated soil and areas susceptible to erosion created as a result of construction or around existing improvements shall be stabilized and/or planted in accordance with a landscaping plan approved by the Government. Esthetics will be given uppermost consideration in the approval process.

f. Safety

Any unsafe conditions in violation of appropriate Federal, State, or local statutes, regulations, or ordinances shall be corrected within a reasonable time. If the Concessionaire does not correct unsafe conditions which threaten human life or bodily injury promptly, the Government may suspend the Concessionaire's right to operate the concession for failure to comply with safety requirements. Failure to correct unsafe conditions shall be a material breach of the agreement.

A.7. Development Work

- a. Site development plans and/or drawings for construction, reconstruction, or alteration of improvements and all revisions of site development plans or construction drawings for the resort area must be approved by the Government, in writing, prior to commencement of construction. Trees on the resort area may be removed or destroyed only after the Government has approved and has marked or otherwise designated the specific trees which may be removed or destroyed. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as approved by the Government.
- b. Nonpermanent structures may be placed at sites approved in writing in advance by the Government, but shall remain in place no longer than two (2) years.
- c. The Concessionaire shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this concession agreement, and shall pay the United States for any damage resulting from his or his agents or employees negligence or violation of the terms of this concession agreement.

A.8. Liquor Sales Permitted

The sale of alcoholic beverages is allowed under this agreement. The sale of alcoholic beverages shall be subject to any regulation established by the Department of the Interior administered by the Water and Power Resources Service, and the regulations established by the California Department of Alcoholic Beverage Control.

A.9. Protection of Land and Property

- a. The Concessionaire will take reasonable measures to prevent and discourage vandalism or disorderly conduct, and, when necessary, will call in appropriate law enforcement officials.
- b. No waste or byproducts shall be discharged which contain any substances in concentrations which may result in substantial harm to fish and wildlife, or to human water supplies. Storage facilities for materials which, if accidentally discharged, are capable of causing water pollution shall be located so as to prevent any spillage into waters, or channels leading into water, that would result in substantial harm to fish and wildlife or to human water supplies. No goods, merchandise, or material shall be kept, stored or sold in or on said premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon, and nothing shall be done on said premises, other than as is provided for in this agreement, and no machinery or apparatus shall be used or operated on said premises which will in any way injure said premises or adjacent buildings, Provided, however, that nothing contained in this paragraph shall preclude Concessionaire from bringing, keeping, or using on or about said premises such materials, supplies, equipment, and machinery as are appropriate or customary in carrying on its said business or from carrying on its business in all respects as is generally usual. Gasoline and oils shall be stored, handled, and dispensed as required by Federal,

State, or local laws, regulations, or ordinances.

c. The Concessionaire shall be responsible for the prevention and control of soil erosion and gullying on the developed area covered by this agreement, and shall provide preventive measures as required by carrying out the provisions of an erosion control plan prepared by the Concessionaire and submitted to the Government for approval not later than September 1 of each year. The plan will be reviewed annually and at any other time deemed necessary by either party. If revision is indicated, such revision will be prepared in writing as agreed to by the Government and the Concessionaire and incorporated into the plan within sixty (60) calendar days thereafter. The Concessionaire will not cause any erosion problems on adjacent lands or undeveloped lands in the resort area.

A.10. Reorganization Schedule

a. The Reorganization Schedule, prepared jointly by the Concessionaire and the Government is attached hereto and made a part hereof . The Concessionaire may accelerate the dates specified in the Reorganization Schedule for installation of any improvement authorized; Provided, The other dates specified in the Reorganization Schedule are met; and Provided further, That all actions specified in the Reorganization Schedule are completed on or prior to the schedule date or dates.

b. All required plans and specifications, as identified in paragraph A.11., for site improvements and structures included in the Reorganization Plan shall be submitted to the Government at least ninety (90) calendar days before the construction dates stipulated in the Reorganization Schedule.

c. In the event there is agreement with the Government to adjust the facilities and services provided in the areas covered by this agreement, the Concessionaire shall jointly prepare with the Government an amended Reorganization Schedule and Reorganization Plan for the adjusted facilities -prior to any

construction. Such an amended schedule shall also be made a part of this concession agreement.

d. If the Reorganization Plan specifies a phase-in of short-term use after completion of the initial phase of the Reorganization Schedule, the second phase of development from long-term to short-term use will occur when all short-term overnight camping sites within the concession area reach an occupancy level of 80 percent over the weekend and holiday periods beginning Memorial Day weekend and extending through Labor Day weekend. This occupancy level is to be maintained over a two (2) year period to insure a definite upward trend in recreation user demand. Each additional phase of the Reorganization Schedule from long-term to short-term use will occur in the manner described above. Conversely, when at any time the occupancy level of the short-term overnight campsites falls below 40 percent over the weekend and holiday period during the same recreation season as designated above in any single year, the Concessionaire may be authorized by the Government to close a portion of those short-term sites.

A.11. Development Planning

a. Design, Planning and Construction

(1) Site Plans, construction plans, specifications, and drawings shall be submitted to the Government for review and approval for each individual construction, reconstruction, or rehabilitation project. No construction will be started until written approval of plans, specifications, and drawings has been made by the Government.

(2) Site plans must show as a minimum the location of buildings, trees, and landforms, service areas, roads, structures, utility corridors and areas, and marina facilities. Such plans shall be on a scale of 1"=40' with 2' contour intervals. The Concessionaire will consult with the Government during the preparation of the site plans to ensure that they are adequate and

conform to the Public Use Plan and this agreement. No construction shall be undertaken by the Concessionaire until the site plans, construction plans, and specifications have been approved.

(3) Construction plans must show:

(a) Plan of each building (scale $\frac{1}{4}" = 1'0"$).

(b) Two (2) true elevations of each building (scale $\frac{1}{4}" = 1'0"$).

(c) Outline specifications of materials and equipment proposed.

(d) Working drawings shall consist of site plans, elevations, details, sections, profiles, building plans, landscape plans, etc., to show in a comprehensive manner all features of the work contemplated.

(4) The Government may determine whether individual projects of minor significance require preparation of site plans, construction plans, specifications, and/or drawings.

b. Standards

The Concessionaire must comply with all Federal, State, and local laws, regulations, ordinances, and standards governing project planning and design of new construction. Such compliance shall also include but not be limited to the Uniform Building Code, the Uniform Plumbing Code, the National Electrical Code, and Titles 24 and 25 of the California Administrative Code.

c. Water Influence Zone: Emergency Action

(1) The water influence zone is that area of land from the water's edge to the 455-foot elevation contour; or, a distance of 50 feet horizontal distance from the 440-foot elevation contour; whichever is the greatest horizontal distance. Long-term occupancy use shall be phased out of this zone in accordance with the Reorganization Plan and the Reorganization Schedule.

(2) The Concessionaire must submit and receive Government approval of an emergency plan not later than 60 calendar days after the effective date of this agreement, showing

the specific action steps which will be taken when the lake reaches an elevation of 440 feet or above. As a minimum this must include consideration for protection of domestic water supplies, precluding water pollution from sewage, and securing or removal of all trailers, mobile homes, and other improvements that may be subject to damage by inundation. The emergency plan shall be updated by the Concessionaire and approved by the Government annually not later than October 15.

(3) All persons owning personal property within this zone must sign and have currently on file a waiver prepared by the Government which relieves the Government of all liability for any damage caused when the lake elevation exceeds 440 feet. Any person not signing such a waiver shall not be authorized to remain.

PART B. SPECIAL PROVISIONS

B.1. Ownership of Facilities

a. In accordance with Public Law 96-375, all permanent facilities placed by the Concessionaire in the resort shall be considered the property of the current Concessionaire. Any permanent additions or modifications to these facilities shall remain the property of the Concessionaire. The Government, however, may require that the permanent facilities mentioned herein not be removed from the concession area, and instead, pay fair value for the permanent facilities, or, if a new concessionaire assumes operation of the concession, require that new concessionaire pay fair value for the facilities to the existing Concessionaire.

b. If the Government, Concessionaire, and any successor concessionaire cannot agree upon the value of any item or items, either party may serve a request for arbitration upon the other party, and the fair value of the item or items in question shall be determined by the majority vote of a board of three arbitrators, selected as follows: Each party shall name one member of such board and the two members so named shall select the third member. If either party fails to appoint an arbitrator within fifteen (15) days after the other shall have appointed an arbitrator and served written notice, including the name and address of the arbitrator appointed, upon the other party, then the American Arbitration Association shall be requested by the Government to appoint an arbitrator to represent the party failing to make the appointment. The costs and expenses of the arbitrator appointed by the American Arbitration Association to represent the party failing to make the appointment shall be paid for by that party. If the third member is not selected within fifteen (15) days after the appointment of the latter of the other two arbitrators, the American Arbitration Association shall be requested by the Government to appoint the third arbitrator. In requesting that the American

Arbitration Association appoint an arbitrator in the situations discussed above, the Government shall request that the person or persons appointed shall be impartial and specially qualified in commercial and real estate appraisal. The fair value determined by the Board of Arbitrators shall be binding on the parties. The compensation and expenses of the third member shall be paid by the Concessionaire and one-half of the amount so paid shall be added to the purchase price. Before reaching its decision, the board shall give each of the parties a fair and full opportunity to be heard on the matters in dispute.

c. If this agreement expires, the Concessionaire shall have the right to remove permanent facilities and improvements unless the Government directs otherwise. Facilities not removed by the Concessionaire within 180 calendar days after expiration of this agreement shall be deemed to have been abandoned by the Concessionaire. The Concessionaire shall have the right to be paid the fair value for permanent facilities and improvements which the Government directs him not to remove pursuant to Public Law 96-375.

B.2. Sale of Interest

a. The Concessionaire and/or any person or entity which owns or controls an interest (as herein defined) in a Concessionaire's ownership (collectively defined as the "Concessionaire" for the purposes of this section), shall not assign or otherwise sell or transfer the concession operations authorized hereunder, nor sell or otherwise as sign or transfer (including, without limitation, mergers, consolidations, reorganizations, or other business combination) an interest in such operations, or the Concessionaire's ownership, without the prior written approval of the Government. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this agreement and the Government shall not recognize any right of any person or entity to own or operate the operations authorized

hereunder or any improvements constructed pursuant hereto in violation of this provision. The Government may require, as a condition of such approval, that the procedures specified in General Provision B.3., Sale of Interest Procedure (or other appropriate procedures prescribed by the Government assuring public ability to acquire concession opportunities) be used.

b. The Concessionaire shall not enter into any agreement with any entity or person to exercise substantial management responsibilities other than for a temporary period not in excess of sixty (60) days for the operation authorized hereunder or any part thereof without written approval of the Government at least sixty (60) days in advance of such transaction.

B.3. Sale of Interest Procedure

a. In the event the Concessionaire desires to sell his interest or ownership in the concession operations the Government may require as a condition of approval the following procedures (or other appropriate procedures prescribed by the Government assuring public ability to acquire concession opportunities):

(1) The Concessionaire shall notify the Government of the proposed sale, assignment or other proposed transaction as described above (hereinafter referred to as the “proposed transaction”), together with full particulars sufficient to provide the general public reasonable notice and information concerning the availability of a concession opportunity.

(2) The Government by public notice and/or advertising, shall make the general public aware of the concession opportunity.

(3) The Concessionaire shall respond to all inquiries received concerning the proposed transaction, shall provide complete information on the proposed transaction, and shall negotiate in good faith with all interested parties.

(4) Upon completion of such negotiation, the

Concessionaire shall provide the Government with the final terms and conditions of the proposed transaction all documents entered into or proposed to be entered relating thereto, the names and qualifications of the party with which it intends to enter into the proposed transaction, a written record of all other parties which indicated interest in the proposed transaction, and a written record of negotiations with such other parties.

(5) The Government shall evaluate such documents relating to the proposed transaction and shall approve or disapprove it, in its discretion. If it disapproves, it may require the Concessionaire to permit any or all of the other interested parties to meet the final terms and conditions of the proposed transaction and the Government, in its discretion, shall select an interested party meeting such terms and conditions. The Concessionaire shall enter into the proposed transaction with such party. The Government in exercising the discretionary authority set forth herein, shall take into consideration the public benefit in approving or disapproving a proposed transaction, including the management qualifications of individuals or entities which would thereby become related to the operations authorized hereunder, the experience of such individuals or entities with similar operations in a resort environment, and the ability of such individuals or entities to operate the concession operations authorized hereunder in the public interest under the regulations of the Government.

(6) The procedure for public notice described above may not be required by the Government when it considers, in its discretion, that the proposed transaction will not result in a substantial change in control or ownership of the Concessionaire operations under this agreement, or the Concessionaire's assets.

b. The new assignment will be for no longer than the unexpired term of the existing concession agreement including remaining option years. In no event will the term of the agreement extend beyond May 26, 2009.

B.4. Rate Approval

a. All rates and prices charged to the public by the Concessionaire for accommodations or services furnished or sold hereunder shall be subject to regulation and approval by the Government. All requests for increases in rates or prices must be accompanied by documents supporting the revised amount. Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations or services furnished or sold under similar conditions with due allowance for length of season, provision for peak loads (average percentage of occupancy), accessibility, availability, cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges.

b. The Concessionaire shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessionaire may, subject to the prior approval of the Government, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder, but not to employees of the Federal Government not on official business, unless such rate and price discounts are available to the general public.

B.5. Insurance

a. The Concessionaire will carry insurance against losses connected with the activities and operations authorized hereunder, and provide the Government certificates of insurance as necessary to evidence compliance with this section. The Concessionaire shall procure at its cost standard fire and extended coverage insurance from responsible companies on all Concessionaire improvements and equipment to their full insurable value and, in the event of loss, shall use the proceeds of such insurance to repair, rebuild, restore, or replace such Concessionaire improvements at the direction of the Government.

b. The Concessionaire shall procure public and employee liability insurance from responsible companies with a minimum limitation of \$250,000 per person for any one claim and an aggregate limit of \$1 million for any number of claims arising from any one incident. The United States of America shall be named as an additional insured on all such policies. All such policies shall specify that the insurer shall have no right of subrogation against the United States for payments of any premiums or deductibles thereunder and such insurance policies shall be assumed by, before the account of, and be at the Concessionaire's sole risk. The Concessionaire shall indemnify, save and hold harmless and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of or from any omission or activity in connection with activities under this agreement.

B.6. Subconcessionaires and Long-Term Residents

a. The Concessionaire may subcontract the use of land and improvements covered under the agreement and the operation of concessions and facilities authorized; provided, the express written permission of the Government has been secured.

The Concessionaire shall continue to be responsible for compliance with all conditions of this agreement.

b. A written agreement shall be executed between the Concessionaire and each long-term resident in the resort area. These agreements must provide that the Concessionaire shall continue to be responsible for compliance with all conditions of this Concessionaire agreement, and state the responsibilities of the long-term resident clearly. The form to be used for each type of long-term resident agreement shall be submitted to the Government for approval not later than 60 calendar days after the effective date of this agreement.

B.7. Solano Project Rights

The Concessionaire recognizes that Lake Berryessa and Monticello Dam are features of the Solano Project constructed for the primary purposes of irrigation and domestic, industrial and municipal water supply in Solano and Napa Counties. The fulfillment of these purposes will require that the level of the reservoir be fluctuated to meet use demand, and the United States reserves the right to vary the water level to the extent deemed necessary or desirable for the purposes of project operations. Over the years the water surface will fluctuate between a minimum elevation of about 253 feet and a maximum of about 455 feet. The Concessionaire shall not do or omit to doing, or knowingly suffer, or permit to be done by others, anything by which act or omission, any persons may be endangered or injured by the use of the reservoir area.

B.8. Water Rights

The Concessionaire may withdraw water from the reservoir for recreational purposes authorized by this agreement.

B.9. Modification of the Agreement

Notwithstanding any of the provisions of this agreement, the parties may hereafter, by mutual consent, agree to modifications thereof or additions thereto in writing which are not forbidden by law. The Government shall have the right to grant reasonable extensions of time to Concessionaire for any purpose or for the performance of any obligation of Concessionaire hereunder.

B.10. Subject to Applicable Law(s)

This agreement is subject to all Federal, State, and local laws, regulations, and ordinances pertaining to the health, safety, and welfare of the public user and employees within the confines of the resort and the facilities and services offered by the Concessionaire.

B.11. Right to Administer the Concession Agreement

a. The Government shall have the right at any time to enter upon the lands and improvements assigned hereunder for any purpose it may deem reasonably necessary for the administration of this agreement or fulfillment of Government responsibilities at Lake Berryessa, but not so as to unreasonably interfere with the Concessionaire's use of such lands or the improvements thereon.

b. The Government reserves the right of ingress and egress without prior notification to inspect, investigate and survey said premises as deemed necessary by the Government, to insure the preservation, maintenance and operation of the concession area. The Government shall give reasonable notice prior to entering the lands and improvements thereon whenever practicable.

B.12. Temporary Suspension of Operation

In the event the Government suspends the Concessionaire's right to operate the resort as specified in Paragraph A.6.f., the Government shall not be liable for any compensation to the Concessionaire for losses occasioned thereby including lost income, profit, wages, or other monies which may be claimed.

B.13. Continuity of Service

To avoid interruption of service to the public upon the expiration or termination of the agreement for any reason except

default, the Concessionaire, upon the request of the Government, will continue to conduct the operations authorized for a reasonable time to allow the Government to select a successor.

B.14. List of Exhibits and Attachments

The following are attached hereto and made a part hereof.

Exhibit A	Reorganization Plan
Exhibit B	Reorganization Schedule
Exhibit C	Existing Facilities
Exhibit D	Rating Plan
Attachment 1	Plan of Markley Cove Resort

PART C. GENERAL PROVISIONS

C.1. Accounting Procedures and Reports

a. The Concessionaire shall develop and maintain its accounting system and records in accordance with generally accepted accounting principles. The records must be sufficiently detailed to properly disclose the Concessionaire's gross receipts and expenditures by type, the annual results of the concession operations and changes in the Concessionaire's net worth and working capital, the Concessionaire's assets (including any additions and deletions) and possessory interests therein, and the rates charged by the Concessionaire for services provided to the public. If the Concessionaire's accounting system is not acceptable to the Government, the Government has the right to prescribe the accounting system and records to be used by the Concessionaire.

b. The Concessionaire shall annually submit, as soon as possible after the end of the calendar year, but not later than May 15th, an annual financial report detailing the Concessionaire's financial condition as of December 31 and the results of his operations for the year then completed. At a minimum, this report shall include:

- (1) a statement from the preparers of the report detailing the extent of their examination of the financial data included therein and their opinion as to the propriety of that data;
- (2) an balance sheet as of December 31;
- (3) an income statement for the year ended December 31;
- (4) a statement of changes in financial condition for the year ended December 31;

c. In those cases where the Concessionaire's and applicable subconcessionaires' gross receipts from the operations authorized under this agreement exceed \$500,000 per year, the

financial report specified in (b) above shall be audited by a Certified Public Accountant. This audit must be made in accordance with generally accepted auditing standards and the Certified Public Accountant's opinion on the financial statement, and a description of the extent of his examination, must accompany the annual report to the Government.

d. The Government shall have the right to verify all reports supplied to the Government and shall have access to the books, correspondence, memoranda, and other records of the Concessionaire and subconcessionaire, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the agreement, and for such time thereafter as may be necessary to accomplish such verification.

e. Within ninety (90) days of the execution of this agreement or its effective date, whichever is later, the Concessionaire shall submit to the Government a signed balance sheet as of the beginning date of the term of the agreement. The balance sheet must be prepared in accordance with generally accepted accounting principles. The balance sheet shall be accompanied by a schedule identifying all assets in detail. In those cases where the Concessionaire's and applicable subconcessionaires' gross receipts from the operations authorized under this agreement exceed \$500,000 per year, the required balance sheet and schedule shall be audited by a Certified Public Accountant and a copy of his report and opinion on the required data shall be submitted to the Government. The Government reserves the right to verify such balance sheet and schedule by audit. If exception is taken by the Government as a result of such audit, the Concessionaire will be notified and the balance sheet adjusted accordingly.

C.2. Franchise Fee and Payment

The Concessionaire shall pay a franchise fee for the privilege of operating the concession. The determination of the

amount of fee to be paid shall be determined in accordance with Paragraph A.4. Franchise Fee, Exhibit D and the following.

a. The term “gross receipts” as used herein, shall mean the total amount received, realized by, or accruing to, the Concessionaire from all sales (including those through vending machines and other coin-operated devices) for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted in this agreement, including gross receipts of subconcessionaires (as hereinafter defined) and commissions earned on contracts or agreements with other persons or companies operating in the resort and excluding intracompany earnings on charges to other departments of the operation (such as laundry and charges to employees for meals, lodgings, and transportation), cash discounts on purchases or sales; returned sales and allowances; interest on money loaned or in bank accounts and income from investments; income from subsidiary companies outside of the resort area; sales of property other than that purchased in the regular course of business for the purpose of resale; sales and excise taxes that are added as separate charges to approved sales prices; gasoline taxes; fishing license fees; and postage stamps. Provided, that the amount excluded shall not exceed the amount actually due or paid Governmental agencies.

b. The term “gross receipts of subconcessionaires” shall be construed to mean the total amount received or realized by, or accruing to, subconcessionaires from all sources, including that through vending machines or other coin operated devices, as a result of the exercise of the rights conferred by subconcession agreements hereunder without allowances, exclusion, or deductions of any kind or nature whatsoever and the subconcessionaire shall report the full amount of all such receipts to the Concessionaire not later than the 15th day of February of each year. The subconcessionaires shall maintain an accurate and complete record of all items listed in subparagraph (a) of this

section as exclusions from the Concessionaire's gross receipts and shall report the same to the Concessionaire with the gross receipts. The Concessionaire shall be entitled to exclude items listed pursuant to the preceding sentence in computing the franchise fee payable to the Government as provided for in subparagraph (a) of this section.

c. Franchise Fees Reports and Service Charge

The Government shall prescribe the format to be used by the Concessionaire in preparing his quarterly reports of gross receipts and franchise fees due. These reports shall accompany the Concessionaire's payment and are due within 45 days after the end of each quarter.

A service charge in addition to the regular fees shall be made for failure to meet the fee payment due date or any of the dates specified for submission of statements required for fee calculation. The service charge shall be one (1) percent per month of the fee from the date statement and fees were due or \$15.00, whichever is greater. If a due date falls on a nonworkday, the service charge will not apply until the end of the next workday.

d. Access to Records

For the purpose of administering this agreement (including ascertaining that fees paid were correct and evaluating the propriety of the fee base), the Concessionaire agrees to make all of the accounting books and supporting records to his business activities as well as those of subconcessionaires operating within the authority of this agreement, available for analysis by qualified representatives of the Government. Review of accounting books and supporting records will be made at dates convenient to the Concessionaire and reviewers. Financial information so obtained will be treated as confidential.

The Concessionaire will retain the above records and keep them available for review for five (5) years after the end of the year involved unless disposition is otherwise authorized.

C.3. Taxes

Concessionaire agrees to pay all lawful taxes, assessments or charges which at any time may be levied by the State, county, city, or any tax or assessment levying body upon any interest in this agreement or any possessory right which Concessionaire may have in or to the premises covered hereby or the improvements thereon by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in or about said premises.

C.4. Assignment of Interest

No transfer or assignment by the Concessionaire of this contract or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by the Government. The Concessionaire's interest in improvements, for the purposes of affording security only, may be assigned, transferred or encumbered when first approved in writing by the

Government. In the event of default and foreclosure on such a mortgage or such other indebtedness or of other assignment, transfer or encumbrance, the bank, lending institution, or the purchaser under the foreclosure sale shall succeed to the possessory interest of the Concessionaire in Concessionaire's improvements. Under these circumstances, operating rights and privileges shall be as outlined in this agreement; however, the right of any person or persons to actually operate the said concession is subject to the approval of Government. The bank, lending institution, or surety may also be given the opportunity to cure the default by assuming management of the resort subject to the approval of the Government.

C.5. Nondiscrimination

a. Requirements Relating to Employment and Service to the Public

(1) Employment

During the performance of this agreement, the Concessionaire must agree as follows:

(a) The Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Concessionaire will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause.

(b) The Concessionaire will, in all

solicitations or advertisements for employees placed by or on behalf of the Concessionaire state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Concessionaire will send to each labor union or representative of workers with which the Concessionaire has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Government, advising the labor union or workers' representative of the Concessionaire's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Concessionaire will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Concessionaire will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessionaire's books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Concessionaire's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations, or orders, the agreement may be cancelled, terminated, or suspended in whole or in part and the Concessionaire may be declared ineligible for further Government agreements in accordance with procedures

authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Concessionaire will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessionaire will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Concessionaire becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

(2) Construction, Repair, and Similar Contracts

The preceding provisions (1)(a) through (g) governing performance of work under this agreement, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this agreement, and shall be included in all contracts executed by the Concessionaire for the performance of construction, repair, and similar work contemplated by this agreement, and for that purpose the term “agreement” shall be deemed to refer to this instrument and to contracts awarded by the Concessionaire and the term “Concessionaire” shall be deemed to

refer to the Concessionaire and to contractors awarded contracts
by the Concessionaire.

(3) Facilities

(a) Definitions. As used herein:

Concessionaire shall mean the Concessionaire and its employees, agents, leasees, subleases, and contractors, and the successors in interest of the Concessionaire; facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(b) The Concessionaire is prohibited from: publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, or national origin; discriminating by segregation or other means against any person because of race, color, religion, sex, or national origin in furnishing or refusing to furnish such person the use of any such facility.

(c) The Concessionaire shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessionaire by the Government.

(d) The Concessionaire shall require provisions identical to those stated in subsection (3) herein to be incorporated in all of the Concessionaire 's contracts or other forms of agreement for use of land made in pursuance of this agreement.

C.6. Default

a. The Government may give the Concessionaire written notice of default or unsatisfactory performance of any of the terms of this agreement subject to section (c) below. Said notice shall specify the particulars of the alleged default(s) or unsatisfactory performance(s) and the manner and/or time period

in which each is to be remedied. If the Concessionaire fails or refuses to remedy such default(s) or unsatisfactory performance(s) within the specified manner and/or time period, the Government may terminate this agreement or any part thereof. A termination decision can be appealed pursuant to 43 CFR, Part 430.

b. In the event the Government terminates this agreement in part as provided in paragraph (a) of this article, the Concessionaire shall continue the performance of this agreement to the extent not terminated under the provisions of this article.

c. The Concessionaire shall not be liable if the failure to perform the agreement arises out of causes beyond the control and without the fault or negligence of the Concessionaire or his subconcessionaire. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Concessionaire.

d. If the agreement is terminated in whole as provided in this article, all rights of the Concessionaire to the use and occupancy of the resort area under this agreement will be forthwith terminated and the Government may require the Concessionaire to transfer title and deliver to the Government or any successor Concessionaire any facilities supplies, equipment, or improvements necessary for the continued operation of the concession area. The Government shall conclusively determine the appropriate payment for these items pursuant to Public Law 96-375 as follows:

- (1) Payments for facilities shall be not more than fair market value.
- (2) Payments for stock in trade shall be not more than its costs to the Concessionaire, as verified by invoices.
- (3) Payments for equipment shall be not more

than fair market value.

e. If the Government purchases those facilities, supplies, equipment or improvements, the Government may withhold from amounts otherwise due the Concessionaire for such facilities, supplies, equipment or improvements such sum as the Government determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders. The Concessionaire shall have the right to remove any facilities, supplies, equipment, or improvements not acquired pursuant to paragraph (d). Any facilities, supplies, equipment, or improvements not removed within 180 calendar days of the effective date of the termination for default shall be deemed to have been abandoned by the Concessionaire.

f. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

C.7. Officials Not to Benefit

No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

C.8. Covenant Against Contingent Fees

The Concessionaire warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this agreement without liability or in its discretion to deduct from the price or consideration,

or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

C.9. Contingent on Congressional Appropriation

The liability of the United States for payment of funds pursuant to this agreement is contingent upon the necessary appropriations being made therefore by the Congress and an appropriate reservation of funds thereunder.

C.10. Severability

If any provision of this agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, the remaining provisions of this agreement shall remain in full force and effect.

C.11. Subsequent Concession Agreements

If the provisions of any new concession agreement with another present concessionaire at Lake Berryessa negotiated pursuant to P. L. 96-375 grants that concessionaire rights or privileges different than those specified in Articles B.I.c. and C.6.e. of this agreement, the Concessionaire may require that Articles B.I.c. and C.6.e. be amended to grant the Concessionaire the same rights and privileges granted to that other concessionaire.

In witness whereof, each of the parties hereto has executed this Agreement as of the day and year first written herein.

Department of the Interior,
Water and Power Resources Service,

By: _____

M.A. Catino
Acting Regional Director,
Mid-Pacific Region

By: _____

Carl Frazier
Concessionaire,
Markley Cove Resort

EXHIBIT A – REORGANIZATION PLAN

The Reorganization Plan for Markley Cove Resort involves gradually reducing the uses occurring on the environmentally sensitive land areas on the west side and increasing the water oriented use. The implementation of the plan allows a reasonable period for adjustment, amortization of investments and a period of income from existing sources until reallocation of resources allows for new incomes to be realized. The Concessionaire shall provide services and facilities as stated herein.

I. Marina Operations

A. Houseboats - 50 units are authorized for Markley Cove Resort.

1. All 50 units are to be fully utilized as commercial houseboat units. No private houseboats are allowed. All houseboat units will be available for rental purposes during the entire year for short- term use (not to exceed 14 days or as otherwise authorized by the Government).

a. All houseboats will have holding tanks for sewage and will be pumped out as necessary.

2. The Reorganization Schedule describes reasonable time periods to acquire and activate houseboat units until total fleet buildup reaches 50 units as specified herein.

3. Support Facilities - Sufficient support facilities must be in place prior to implementation of a houseboat operation. Support facilities shall include sewage pumpout unit(s), holding area(s) and a pump station(s) to transfer sewage to land facilities. The above facilities must be approved and inspected by the Napa County Building Department and the Division of Environmental Health prior to commencement of operation.

The following shall be made available:

a. A supply of domestic water meeting county standards for potable water.

b. Dock facilities for accommodating housekeeping services are required in rental operations. Gas fueling facilities will be separate from regular marina operation to service houseboats with propane.

c. The vehicle area for parking houseboat users will be the existing short-term campground on the west side and adjacent to the shoreline. When additional parking is required the areas adjacent to the road by the motel units will be utilized. No parking will be allowed in the long - term sites formerly occupied by trailers.

B. Moorage - Existing moorage slips may be expanded by not more than 50 covered or open slips. Depending upon available parking capacity, additional moorage slips may be authorized by the Government.

C. Dry land storage - To increase dry land storage for boats and boat trailers the end portion of the cove will be filled with material excavated from the exposed reservoir bottom during periods of low water.

D. A small retail store and snack bar facility on the water shall be provided to accommodate houseboat customers and other lake users.

E. Provide fishing boat rentals with and without motors for public use.

F. Provide launch ramp facilities - Extend existing ramp when material is excavated to fill in the back portion of the cove. When possible, ramp shall be extended down to elevation 380 feet to ensure usability during low water years.

II. Roads

A. The highway access entrance road to existing west side facilities will be used for winter storage for houseboats after the new crossover is constructed near the launch ramp area. This road shall be blocked to eliminate access by the public and fenced to provide security for the protection of the houseboats.

B. All roads located north of the first major drainage will be abandoned and allowed to revert back to their natural condition. This will occur as soon as all the long - term trailer tenants have been phased out. This area is identified on Attachment 1.

III. Long - Term Trailer Sites

A. All long-term trailer sites shall be removed by September 15, 1991.

B. All long-term trailer sites shall be removed by the Concessionaire at his expense. These facilities shall be removed in accordance with the Reorganization Schedule, exhibit

B. Any long-term trailer sites not removed in accordance with the Reorganization Schedule shall be deemed to have been abandoned by the Concessionaire. Title to all such abandoned facilities shall be vested in the Government.

IV. Use of Areas A, B, and C

The Concessionaire may use areas A, B, and C as identified in Attachment 1, for the purposes stated below. These areas shall cease to be a part of the concession area if the Concessionaire has failed to use them for the authorized purposes by the dates specified in the Reorganization Schedule.

A. Area A - houseboat winter storage area (to be fenced).

B. Area B - site for construction of boat storage holding(s) east side of highway.

C. Area C - future site for development of a new launch ramp and terraced parking areas on a point north of existing facilities.

V. Retail Area

A. The existing store may be enlarged to handle anticipated increase in boating public and new lines of

merchandise. The existing restaurant and bar facilities may be eliminated or reduced in size to accomplish this store enlargement.

B. The three existing trailer sites located behind main store complex may be retained for employee housing (these facilities must comply with other provisions of this agreement). Additional employee housing may be made available by using the existing motel units if they are substantially rehabilitated. The motel units shall be removed by the Concessionaire at his expense if substantial rehabilitation is not completed by May 26, 1986. Three mobile homes by the motel complex may also be used for employee housing.

C. Ten to 15 short-term campsites shall be established along the perimeter of the existing parking area for off-season use. Some use will be allowed during midweek low use periods. During high use periods the entire area must be used for parking.

VI. Utilities

A. Sewage disposal - The existing system must be made adequate to accommodate an increased load when full houseboat usage occurs.

B. The sewage system shall be deactivated north of the first major drainage on the west side as shown on Attachment 1.

C. The existing water system shall be upgraded if required to meet Napa County standards.

D. The above-ground water servicing facilities shall be removed from the long-term trailer sites. All aerial electrical and telephone service leads shall be removed from long-term trailer sites. All such water, electricity, and telephone facilities shall be removed by December 31, 1991.

VII. Water Surface Management

A. Water areas within the concession boundaries

requiring speed zones shall be marked with regulation buoys as specified by the California Department of Boating and Waterways in the State boating regulations.

VIII. Concession Boundary Adjustments

A. All of the concession area on the west, north of the first major drainage shall cease to be part of the concession area by 1992.

B. Areas A and B shall cease to be included in the concession area if the Concessionaire has not developed these areas as stated in this agreement by May 26, 1989.

C. Area C shall cease to be included in the concession area if the Concessionaire has not developed this area as stated in this agreement by May 26, 1999.

EXHIBIT B – REORGANIZATION SCHEDULE

The Reorganization Schedule is as follows:

- I. Marina Operations
 - A. Houseboat Operations
 1. Site plans, construction plans, and specifications for houseboat support facilities to be submitted for approval by September 1, 1981, to the Government. The plans and specifications will include the major component items such as service docks, dock sewage disposal system, fuel service dock, potable water distribution system on the docks, houseboat moorage docks, etc.
 2. Temporary plans will be approved for temporary facilities to handle a small houseboat fleet (not more than 10 houseboats) for the 1981 recreation season, contingent upon the Concessionaire obtaining Napa County permit(s) and approval(s).
 3. Complete construction of houseboat support facilities by May 1, 1982, to accommodate up to 20 houseboats.
 4. The Concessionaire may acquire up to 10 houseboats by May 15, 1981, provided temporary facilities are approved and adequate to support the houseboats acquired.
 5. Not less than 10 houseboats shall be available to the public for rental purposes by May 15, 1982.
 6. Not less than 20 houseboats shall be available to the public for rental purposes by May 15, 1983.
 7. Site plans/construction plans and specifications for construction of additional moorage facilities to accommodate 20 houseboats shall be submitted for approval by May 15, 1984. Construction shall be completed by May 1, 1985.
 8. A maximum of 50 houseboats may be

available by May 15, 1988. A review of houseboat numbers will occur during the concession agreement renewal dates of 1989 and 1999. If, by the agreement renewal dates, the Concessionaire has not made available the maximum number of houseboats authorized under this agreement, the surplus authorization will be withdrawn.

B. Moorage Facilities

1. The moorage capacity shall be expanded by 20 berths by May 1, 1985. Site plans, construction plans, and specifications shall be submitted for review and approval by November 15, 1984.

2. The moorage capacity shall be expanded by an additional 30 berths by May 26, 1989. Site plans, construction plans, and specifications shall be submitted for review and approval September 15, 1988.

C. Dry Land Boat Storage

1. The site plans, construction plans, and specifications for filling in the end portion of the cove for a boat storage area shall be submitted to the Government by February 1, 1982, for review and approval. Excavation and filling shall commence not later than December 1, 1983, after environmental assessment review and approval, Army Corps of Engineers assessment and permit issuance, and the California Department of Fish and Game review and permit issuance.

D. Small Retail Store and Snack Bar on the Water Surface

1. Site plans, construction plans, and specifications shall be submitted to the Government for review and approval by October 15, 1981. The approved plans and specifications will then be submitted to Napa County Building Department and Division of Environmental Health for review, approval, and issuance of the necessary permit(s).

2. Complete construction of facility by May 1, 1982.

E. Launch Ramp Extension - To be accomplished concurrently with the dry land boat storage. The excavation plans shall show detail of ramp extension. Excavation shall proceed as allowed by existing water level during any one year.

II. Roads

A. Highway Access to West Side

1. Submit plans and specifications to the Government by October 15, 1981, for review and approval, for proposed crossover of the cove. The crossing will be constructed in the fall of 1983 after environmental assessment review and approval, Army Corps of Engineers assessment and permit issuance, and the California Department of Fish and Game review and permit issuance have all been concluded.

2. Upon satisfactory completion of the crossing, the west side access shall be effectively blocked off allowing this portion of the road to be utilized for houseboat winter storage. Security fencing shall be constructed prior to use.

B. Roads Located North of First Major Drainage are Shown on Attachment 1.

1. All long-term trailers will be phased out by September 15, 1991. In order to allow an adequate cleanup of the area vacated by the trailer tenants, the road will remain open until May 15, 1992. At that time the road shall be effectively blocked off and allowed to revert back to a stabilized condition after all culverts have been removed from the drainages.

III. Long-Term Trailer Sites

A. All long-term trailer site occupants shall be notified by letter not later than June 1, 1981, that they are being given notice to vacate their sites by September 15, 1991, due to a land use change as prescribed in the Reorganization Plan. The Concessionaire will prepare such a letter and submit for

Government review. Tenants may sell their trailers to new occupants as long as the new occupants are fully aware of the September 15, 1991, removal date.

B. All trailers and personal property of the tenants shall be removed by September 15, 1991.

C. The Concessionaire shall contact the PG&E and Pacific Telephone companies to remove aerial service leads to all trailer sites on west side by December 31, 1991. These companies shall be notified of this requirement by March 15, 1991.

D. The Concessionaire shall deactivate the water and sewage systems and remove all above ground fixtures by January 1, 1992.

IV. Use of New Areas

A. The determination shall be made by June 15, 1985, as to whether areas A and B are economically feasible for use and whether the Concessionaire wants to proceed as planned.

If these areas are not used by the concession renewal date of May 26, 1989, they shall be deleted from the concession area.

B. The determination shall be made by May 26, 1989, whether area C is economically feasible for use and whether the Concessionaire wants to proceed as planned. If this area is not utilized by May 26, 1999, it shall be deleted from the concession area.

V. Retail Area

A. Submit plans and specifications after Government review to the Napa County Building Department and Division of Environmental Health for construction modifications on the store-restaurant-bar complex for review and approval by January 31, 1984. The Concessionaire shall obtain necessary county permits prior to commencing project. The project shall commence not later than September 15, 1984.

B. Motel complex - Submit plans and specifications for review and issuance of necessary permit(s) from Napa County by October 15, 1981, for rehabilitation of the motel complex. Complete work by July 1, 1982.

C. Short-Term Campsites

1. Submit plans and specifications for short-term campsites with electrical hookups for self-contained recreation vehicles by March 15, 1982, for review and approval by the Government.
2. The approved plans will then be submitted to Napa County Building Department and the Division of Environmental Health for review and issuance of necessary permit(s) by May 1, 1982.
3. Construction shall begin by September 15, 1982.

VI. Utilities

A. Sewage Disposal System(s)

1. The Concessionaire shall supply sufficient and accurate data in order to determine whether the existing system is adequate and whether adjustments or modifications are required to accommodate the increased load resulting from adding a 50 fleet commercial houseboat operation.
Due May 1, 1981, to the Government.

2. The Government will approve the initial houseboat operation provided the sewage disposal system meets Federal, State and county requirements by May 15, 1981. The Concessionaire shall obtain necessary county permit(s), prior to starting houseboat operation.

B. Long-Term Trailer Sites

The Concessionaire shall deactivate sewage disposal system after trailers are removed in 1991. The deactivation shall be complete by May 1, 1992.

C. Water System

The water system shall be reviewed for adequacy during routine Napa County inspections. Upgrading or modifications shall be completed as required.

VII. Water Surface Management

A. The Concessionaire shall install buoy systems necessary to promote public safety as described by the California Department of Boating and Waterways requirements by May 1, 1981. Buoys shall conform to California State Boating regulations.

VIII. Concession Boundary Adjustments

A. Area north of first major drainage shall be deleted from concession area by July 1, 1992.

B. Additional deletions to follow schedule as specified in section IV

EXHIBIT C – EXISTING FACILITIES

1. Structure - Store, bar, restaurant
 2. Paved parking area (front)
 3. Entrance station
 4. Maintenance shed
 5. Dust coated chip seal parking area
- (back)
6. Six trailer sites, full hookup
 7. Launch ramp, four lanes
 8. Courtesy docks
 9. Fuel dispensing dock
 10. Fuel storage tanks (buried) 2-1,000 gal.
3-2,000 gal.
 11. Fuel distribution lines and shutoff
valves
 12. Covered berth docks, 32 berths
 13. Open berth docks, 16 berths
 14. Existing sewer and water systems
 15. West side road system
 16. Motel units (5)
 17. Ice storage unit